

IP 03-0149-CR 1 T/F USA v Barringer
Magistrate Kennard P. Foster

Signed on 11/03/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 03-149-CR (T/F)
)	
ALBERT BARRINGER,)	
)	
Defendant.)	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable John Daniel Tinder, Judge, on September 29, 2005, designating this Magistrate Judge to conduct a hearing on the Petitions for Summons or Warrant for Offender Under Supervision filed with the Court on September 23, 2005, and to submit to Judge Tinder proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings were held October 31, 2005, in accordance with Title 18 U.S.C. §3583 and Rule 32.1 of the *Federal Rules of Criminal Procedure*. Mr. Barringer appeared in person and with his appointed counsel, William Dazey. The government appeared by Tim Morrison, Assistant United States Attorney. Mike Kendall, U. S. Parole and Probation officer, appeared and participated in the proceedings.

On October 31, 2005, the following proceedings occurred in accordance with Rule 32.1(a)(1) of the *Federal Rules of Criminal Procedure*:

1. That William Dazey, the Indiana Federal Community Defender's Office, was appointed to represent Mr. Barringer in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Barringer and his counsel who informed the Court that they had read and understood the specifications of violations and waived further reading thereof.

3. Mr. Barringer was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. Mr. Barringer was advised he would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. Mr. Barringer was advised he had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Barringer had violated an alleged condition or conditions of his supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Tinder's designation entered September 29, 2005.

7. Mr. Barringer stated his readiness to waive the preliminary hearing. Mr. Barringer then waived, in writing, the preliminary hearing and he was held to answer.

8. Mr. Dazey stated that Mr. Barringer would stipulate there is a basis in fact to hold him on the specifications of violation of supervised release set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed September 23, 2005, described as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>“The defendant shall notify the probation officer at least 10 days prior to any change in residence or employment.”</p> <p>Mr. Barringer’s home plan was to reside at the Volunteers of America upon his release from the Bureau of Prisons on September 19, 2005. On that date, he was given a pass to go to Midtown Mental Health center to obtain his medications. The offender did not return to the VOA and did not report a new address to this officer.</p>
2	<p>“The defendant shall participate in a program of mental health treatment as directed by the probation officer.”</p> <p>On September 14, 2005, this officer directed the offender to contact Midtown Mental Health center to obtain mental health treatment. On September 19, 2005, Mr. Barringer was provided a pass to leave the VOA to receive treatment at Midtown Mental Health Center. He did not contact the mental health agency.</p>
3	<p>“The defendant shall comply with any medically recommended medication regimen to treat professionally diagnosed illness or disorders.”</p> <p>On September 14, 2005, this officer directed the offender to contact Midtown Mental Health Center to obtain a refill on his medications prescribed at BOP. On September 19, 2005, he was provided a pass to leave the VOA to go Midtown Mental Health Center to obtain these medications. He did not arrive at Midtown to obtain his medications.</p>

Counsel for the parties further stipulated the following:

- 1) That Mr. Barringer has a relevant criminal history category of III. *See*, U.S.S.G. §7B1.4(a).
- 2) That the most serious grade of violation committed by Mr. Barringer constitutes a Grade C violation, pursuant to U.S.S.G. §7B1.1(b).
- 3) That pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Mr. Barringer is 5-11 months.

4) The parties did not agree on what the disposition for Mr. Barringer's violation of the conditions of supervised release would be and would separately argue their positions.

9. The Court then placed Mr. Barringer under oath and inquired directly of him whether he admitted committing allegations of violations of his supervised release contained in the Petition to Revoke Supervised Release, filed September 23, 2005. Mr. Barringer admitted the violations set forth above.

The Court, having heard the evidence and/or arguments of the defendant and his counsel, and the government, now finds that Mr. Barringer violated conditions of supervised release as delineated above.

Mr. Barringer's supervised release is therefore **REVOKED** and he is sentenced to the custody of the Attorney General or his designee for a period of 4 months, with 32 months of supervised release to follow. Mr. Barringer is also subject to the same conditions of supervised release as previously entered by the Court.

The Magistrate Judge requests that Mike Kendall, U. S. Parole and Probation Officer, prepare for submission to the Honorable John Daniel Tinder, District Judge, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

You are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge pursuant to Title 28, U.S.C. §636(b)(1)(B) and ©) and Rule 72(b) of the *Federal Rules of Civil Procedure*. You shall have within ten days after being served a copy of this Report and Recommendation to serve and file written objections to the proposed findings of facts and conclusions of law and recommendations of this Magistrate Judge. If written objections to the Magistrate Judge's proposed findings of fact and recommendations are made, the District Judge will

make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which an objections is made.

IT IS SO RECOMMENDED this 3rd day of November, 2005.

Kennard P. Foster, Magistrate Judge
United States District Court
Southern District of Indiana

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U. S. Parole and Probation

U. S. Marshal